

Prepared by:

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Return to:

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Tax Parcel #: \_\_\_\_\_

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DELCO GREEN WAYS GRANT PROGRAM

**DECLARATION OF PUBLIC TRUST, COVENANTS, CONDITIONS, AND RESTRICTIONS**

(Submit with electronic or original signatures with all grant applications except Conservation Easements)

THIS DECLARATION OF PUBLIC TRUST, COVENANTS, CONDITIONS, AND RESTRICTIONS is made this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by the \_\_\_\_\_, Delaware County, Pennsylvania, (hereinafter "Declarant"). *(municipality name)*

BACKGROUND

WHEREAS, Declarant is a \_\_\_\_\_ of the \_\_\_\_\_ class of the Commonwealth of Pennsylvania and is the owner of a parcel of land containing \_\_\_\_\_ acres identified as tax parcel number(s) \_\_\_\_\_ located in \_\_\_\_\_, *(name of municipality[s])*

whose ownership is on record at the Delaware County Recorder of Deeds in Deed Book \_\_\_\_\_ Page \_\_\_\_\_; and

WHEREAS, Article 1, Section 27 of the Pennsylvania Constitution states that: Pennsylvania's public natural resources are the common property of all the people, including generations yet to come. As trustee of these resources, the Commonwealth shall conserve and maintain them for the benefit of all the people; and

WHEREAS, this Declaration affirms the Land as a public natural resource benefitting the people as described in the Pennsylvania Constitution, dedicating the Land or confirming the Land's dedication to the Public Purposes and subject to the protections provided by, but not limited to, the Donated or Dedicated Property Act of December 15, 1959 P.L 1772, 53 P.S. §§3381-3386 (the "Donated or Dedicated Property Act"); and

WHEREAS, Counties are authorized to acquire interests in real property to protect and conserve natural or scientific resources; to protect scenic areas; to preserve sites of historic, geologic or botanic interest; to promote sound, cohesive and efficient land development by preserving open spaces between communities; and for purposes consistent with the terms of the Conservation and Land Development Act (the "Conservation Act"), Pa. Stat. Ann. Title 32, Section 5001 et seq; and

WHEREAS, the Council of Delaware County have therefore designated County funds for municipal partners to promote the health, safety, and public welfare of the citizens of Delaware County by providing grants to municipalities for the acquisition and preservation of significant natural, recreational, historic, cultural, scenic, and agricultural resources; and for the development of parks and trails; and

WHEREAS, pursuant to the guidelines and criteria of the Delaware County Open Space and Recreation Municipal Grant Program, Declarant submitted an application to the Program for assistance to fund an applicable project of a type other than a conservation easement; and

WHEREAS, as a specific condition of the aforesaid County grant Program, the Declarant agrees to record a covenant running with the land requiring the continuous use of the Property for open space, natural areas, natural resource conservation, agriculture and/or public parks, trails and greenways, and to hold and manage the property on behalf of the Public Trust including protections afforded under the Donated or Dedicated Property Act; and

WHEREAS, the Property possesses natural, scenic, open space, historical, agricultural, educational, and/or recreational values (collectively "conservation values") of great importance to Declarant, the people of Delaware County, and the people of the Commonwealth of Pennsylvania; and

WHEREAS, Declarant further intends, as owner of the Property, to permit public access and/or agriculture, and further to preserve and protect the conservation values of the Property in perpetuity; and

NOW, THEREFORE, intending to be legally bound hereby, Declarant shall utilize Property solely and exclusively for the uses stated herein and as further specified in Article III.

#### ARTICLE I - DEFINITIONS

The following words and terms, which are used in this Declaration, shall have the following meanings:

1. "DECLARATION" shall mean and refer to this instrument, as amended from time to time.
2. "DECLARANT" shall mean and refer to the Municipality to be bound by this agreement.
1. "SUCCESSOR DECLARANT" shall mean each entity to which Declarant shall have specifically, by writing, assigned or conveyed any or all of Declarant's rights in and to the Property.

ARTICLE II - PROPERTY

1. PROPERTY" shall mean the existing property or parcel of land referenced above and more particularly described in Article II and Exhibit "A" (legal description) and shown on Exhibit "B" (map) attached hereto. The property subject to the restrictions herein is all or part of a parcel of land containing \_\_\_\_\_ acre(s), identified as Tax Parcel Number(s) \_\_\_\_\_ located in \_\_\_\_\_.  
*(name of municipality).*

In the event of any additions to the existing property, which shall be made subject to this Declaration, then, from and after the recording of an appropriate Supplementary Declaration, the term "Property" shall mean the existing property and any such additions.

ARTICLE III - RESTRICTIONS

1. The use of the Property as defined in this Declaration shall be restricted to open space, natural areas, natural resource conservation, agriculture and/or public parks, trails and greenways. If, when, and as it is deemed inappropriate to utilize the Property for the originally intended permitted uses, it is agreed, understood and hereby declared that the utilization of the Property shall be for open space and free of any use or encumbrance prohibited by this Declaration. The term of this restriction shall be perpetual, and it shall be a covenant running with the land.

2. The following two items serve to highlight uses that are specifically prohibited but does not represent the full extent of uses that are in violation of this Declaration: Disposal of sewage effluent generated off-site (including disposal of offsite-generated sewage at any stage of treatment or post treatment using any technology including but not limited to spray or drip irrigation) is prohibited. Any composting materials, waste products or any other items that are generated off site may not be placed on site for any reason including disposal or processing.

3. Property subject to this Declaration shall not be available to count toward satisfying any open space or preserved land requirements as stipulated under applicable municipal land use laws, ordinances, or codes. Furthermore, owners may not transfer for use outside the Property (whether or not for compensation) any development rights allocated to the Property under any applicable law.

4. The Declarant shall manage and develop the property for authorized uses in a manner that maximizes public access consistent with the respective use and preserves the integrity of natural resources such as stream corridors, steep slopes, wetlands, and state, national or globally rare species.

5. No additional restrictions may be placed on the Property without permission from the County Department responsible for programmatic oversight. Express written consent of the Council of Delaware County Pennsylvania is required if the County finds that the additional restrictions proposed will reduce public access or diminish the conservation values of the property.

## ARTICLE IV – RESERVATION

1. Declarant reserves the right but not the obligation to install, or allow the installation of, underground improvements provided: such improvements are otherwise permitted by federal, state and local laws, rules and regulations and the improvements are not extractive of natural resources that are part of the bundle of rights that comprise the Property. Any permissible underground improvements must only serve Public Purposes and must be designed and located so as not to materially affect the Public Purposes being financed in part by the County grant.

2. Declarant may lease or license portions of the surface of the Land to others to provide or assist the Declarant in providing facilities, programs, goods, services, or other amenities to the public that are consistent with the Public Purposes of the Open Space and Recreation Municipal Grant Program.

## ARTICLE V - ENFORCEMENT

1. The County of Delaware shall have the right and power to enforce the terms of this Declaration, by any proceedings at law or in equity, against the Declarant, Successor Declarant, or any person or persons violating or attempting to violate any provision of this Declaration; to restrain violations; to require specific performance; and/or to recover damages.

2. In execution of its monitoring and enforcement rights, the County of Delaware has the right to enter and inspect the Property for compliance with this Declaration by way of land, through the use of an unmanned aerial vehicle, or a combination of both.

3. Rights and remedies arising out of this declaration are cumulative; they neither limit nor are limited by any rights or remedies arising from the Donated or Dedicated Property Act or other applicable authority available for upholding the Public Purposes.

4. If the County determines that Declarant, Successor Declarant, or any other person is in violation of the terms of this Declaration or that a violation is threatened, the County shall give written notice to the party in violation and demand corrective actions sufficient to cure the violation, and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the permitted uses of this Declaration, to restore that portion of the Property so injured. If violator fails to cure the violation within thirty (30) days after receipt of notice thereof from the County, or under circumstances where the violation cannot reasonably be cured within a thirty day period, fails to begin curing such violation within the thirty (30) day period, or fails to continue diligently to cure such violation until finally cured, the County may bring an action at law or equity in a Court of competent jurisdiction to enforce the terms of this Declaration, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction to recover any damages to which it may be entitled for violation of the terms of this Declaration or injury to any public interest protected by this Declaration, and to require the restoration of the Property to the condition that existed prior to such injury.

5 Without limiting Declarant's, Successor Declarant's, or any other person's liability therefore, the County, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. The County's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Declaration and Declarant and Successor Declarants agree that the County's remedies at law for any violation of the terms of this Declaration are inadequate and that the County shall be entitled to the injunctive relief described in this Article, both prohibitive and mandatory in addition to such other relief to which the County may be entitled including specific performance of the terms of this Declaration, without necessity or proving either actual damages or the inadequacy of otherwise available legal remedies. The County's remedies described in this Article shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

6 Cost of enforcement. Any costs incurred by the County in enforcing the terms of this Declaration against Declarant or Successor Declarant, including, without limitation, costs of suit and attorneys' fees, and any costs of restoration necessitated by Declarant or Successor Declarant's violation of the terms of this Declaration shall be borne by Declarant or Successor Declarant.

7 The failure by the County to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

#### ARTICLE VI - MISCELLANEOUS

1. The covenants and restrictions of this Declaration shall run with the land and bind the Property in perpetuity.

2. The provisions of this Declaration shall, pursuant to its terms, inure to the benefit of Delaware County, and bind the Property, Declarant and its successors and assigns.

3. Recording. This Declaration shall forthwith be recorded in the Office of the Recorder of Deeds in and for the County of Delaware, Pennsylvania.

